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No. 545

In the Supreme Court of the United States

OCTOBER TERM, 1968

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 25–33) is reported at 397 F. 2d 467.

JURISDICTION

The judgment of the court of appeals was entered on July 2, 1968. The petition for a writ of certiorari was filed on September 20, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals correctly construed and applied regulations adopted under the Safety

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Appliance Acts (45 U.S.C. 9) in determining the type of brake inspections required of certain trains passing under petitioner's control.

STATEMENT

In 1958 Congress amended the Safety Appliance Act by enacting the Power or Train Brakes Safety Appliance Act, which empowered the Interstate Commerce Commission to adopt rules for the inspection of all power or train brakes on rail carriers. 45 U.S.C. 9 (Pet. App. 34–35). Pursuant to that authority, the Commission adopted regulations which provide for three distinct train brake inspections applicable in different circumstances. Under these regulations, the most stringent brake inspection test is applicable, *inter alia,* when a train is originally made up, when it is received in interchange, and with respect to "[t]ransfer train and yard train movements" in excess of 20 miles (49 C.F.R. 132.13(e)(2)).[1] An intermediate test, known as the "walk the train test" (see Pet. App. 23), applies to "[t]ransfer train and yard train movements" of less than 20 miles. 49 C.F.R. 132.13(e)(1) (Pet. App. 36). The least stringent inspection, commonly called the "rear end test," applies at the point where the locomotive or caboose is changed or where consecutive cars are cut off the

[1] The regulations at issue, set forth in pertinent part at Pet. App. 36, were redesignated 49 C.F.R. 232.12 and 49 C.F.R. 232.13 on April 5, 1967. Because the former designations, 49 C.F.R. 132.12 and 132.13, were used by the court below and in the petition, they are also used herein for the convenience of the Court.

rear end or front end of a train with the consist otherwise remaining intact. 49 C.F.R. 132.13(c)(1) (Pet. App. 36). Each of the two more stringent regulations requires a visual inspection to determine that the brakes are properly applied on all the cars, while the least stringent test requires only a determination that the brakes of the rear car are properly applied.

The instant case arose out of three suits for statutory penalties filed in the United States District Court for the Eastern District of Illinois, in which the United States charged petitioner corporation with the operation of trains without making the proper brake inspections required by the applicable regulations. Petitioner is a terminal line carrier which operates a terminal and interchange facility for other railroads in the St. Louis area, where it owns railroad tracks and yards on both sides of the Mississippi river. It was agreed below that the following two movements under petitioner's control were representative of all those at issue.

1. The New York Central Train Movement

The New York Central Railroad delivered a freight train, originating in Indianapolis, to petitioner at the latter's tracks in East St. Louis. Petitioner's crew replaced the New York Central crew and operated the entire train without any change in consist to Dupo, Illinois, a distance of nine miles, where it delivered the train to another railroad. Petitioner performed no brake test of any kind.

2. The Missouri Pacific Train Movement

The Missouri Pacific Railroad made up a train at Little Rock, Arkansas which it hauled to Dupo, Illinois. There, the locomotive and caboose were removed and a locomotive and caboose of petitioner were coupled on by petitioner's crew. This crew inspected the brakes on the rear car and made the least stringent test required by the regulation (49 C.F.R. 132.13(c)(1)). Petitioner's crew then operated this train over its lines for a distance of eight miles where it delivered it to another carrier.

The district court found that petitioner had not violated any of the brake testing regulations. The court of appeals reversed and remanded with directions to enter judgment for the United States. It held that both train movements were "transfer train" movements subject to the intermediate inspection regulation, requiring visual inspection of the brakes on each car. It rejected petitioner's argument that the obligation to inspect the brakes was not affected by its assumption of control of the train from the trunk line carrier. It also rejected the government's contention that the receipt of the intact New York Central trains by petitioner constituted an "interchange" subjecting the trains to the most stringent inspection.

ARGUMENT

The overall objective of the Safety Appliance Acts, as the 1958 Amendment relating to brake inspection involved in this case re-emphasizes (see Pet. App. 34–35), is to protect railroad employees and the public from injury caused by defective railroad equip-

ment. Indeed, in carrying out the statutory purpose each carrier, including a terminal carrier, has an absolute duty to refrain from hauling defective cars. *United States* v. *Houston Belt and Terminal Ry. Co.*, 210 F. 2d 421, 425 (C.A. 5). In holding that petitioner, by taking control of the trains involved in this case, was obligated to make a visual inspection of the brakes on each car, the court of appeals adopted a logical and symmetrical interpretation of the brake testing regulations in keeping with the underlying statutory purpose.

1. While holding that the control exercised by petitioner did not have all the attributes of an "interchange" thereby automatically requiring the most stringent brake inspection under 49 C.F.R. 132.12, the court of appeals also rejected the argument that petitioner's assumption of control of the trains had no bearing at all upon its inspection responsibilities. It thereby avoided the result—both faulty in logic and inimical to considerations of safety—that despite substantial similarity in petitioner's control no inspection was required in one case of transfer and minimal inspection was required in another. Instead, the court reasoned that "[t]reating each carrier which handles a train movement independently, and compelling it to inspect for itself rather than rely on an inspection by a previous carrier is a reasonable means of promoting safety, and appears to be intended by the regulations" (Pet. App. 29),[2] and that petitioner

[2] As this Court noted in *United States* v. *Seaboard A.L.R. Co.*, 361 U.S. 78, 82: "Traditionally, movements of assembled

should therefore be held independently responsible "for compliance with safety requirements by trains which are on its line and under its control" (Pet. App. 30). In other words, the court ruled that upon taking custody and control of a train, a terminal line carrier, such as petitioner, has at least the minimum duty to make sure that the brakes of each car of the train work properly (see 49 C.F.R. 132.13(e)(1)).

2. Petitioner argues (Pet. 9–11), however, that in order to reach this conclusion the court of appeals had to treat the train movements in this case as "transfer train" movements, contrary to decisions of this Court. This contention reads unintended consequences into those decisions. The decisions relied upon by petitioner were discussed in *United States* v. *Seaboard A.L.R. Co.*, 361 U.S. 78, 80–81, where this Court noted that each case was concerned with the distinction between movement of a "train" which falls within the Safety Appliance Acts and other movements such as switching operations which fall outside the statutory coverage. The issue was "[t]he meaning of the word 'train' as used in the Act * * *" (361 U.S. at 80). Nothing in those decisions, or in the decisions of the lower courts upon which petitioner relies, purported to set forth an immutable definition of "transfer train" for all factual contexts. Least of all do those decisions support petitioner's contention that its movement of what is admittedly a "train" cannot be con-

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cars for substantial distances involved the hazards of crossing public highways and the tracks of other lines with attendant risks to the public." Moreover, it is settled that control of a train by a carrier imposes an absolute duty of care. *Brady* v. *Terminal R.R. Assn.*, 303 U.S. 10.

sidered a "transfer train" movement because that concept is limited to "the transfer of temporary groupings of cars * * *" (Pet. 11). There is thus no barrier to the interpretation of the regulations made by the court below, that a transfer train includes "a train which is physically delivered by one carrier to a terminal or belt line carrier * * *" (Pet. App. 32)—an interpretation which serves the underlying safety purpose of the statute and regulations.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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